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May 14, 1996

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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William F. Caton, Acting Secretary  
Federal Communications Commission  
Washington, DC 20554

Re: WT Docket No. 96-18  
PP Docket No. 93-253

Dear Mr. Caton:

Transmitted herewith on behalf of TSR Paging Inc. are an original and eleven (11) copies of a "Supplement To Emergency Petition For Reconsideration" with respect to the First Report and Order, FCC 96-183 (released April 23, 1996) in the above-captioned proceeding.

Should any questions arise with respect to this matter, please communicate directly with undersigned counsel.

Respectfully submitted,

*Richard S. Becker*

Richard S. Becker  
Attorney for TSR Paging Inc.

Enclosures

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of	)	
	)	
Revision of Part 22 and	)	WT Docket No. 96-18
Part 90 of the Commission's	)	
Rules to Facilitate Future	)	
Development of Paging Systems	)	
	)	
Implementation of Section	)	PP Docket No. 93-253
309(j) of the Communications	)	
Act -- Competitive Bidding	)	

To: The Commission

**SUPPLEMENT TO  
EMERGENCY PETITION FOR RECONSIDERATION**

TSR Paging Inc. ("TPI"), by its attorneys and pursuant to 47 C.F.R. §1.429, hereby submits this Supplement to the "Emergency Petition For Reconsideration" ("Emergency Petition") filed by TPI on May 6, 1996, with respect to the First Report and Order, WT Docket No. 96-18, PP Docket No. 93-253, FCC 96-183 (released April 23, 1996) ("First R&O") in the above-captioned proceeding.<sup>1</sup> In support of this Supplement, the following is respectfully shown.

1. In its Emergency Petition, TPI demonstrated that the

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<sup>1</sup>On May 6, 1996, TPI also submitted an "Emergency Motion For Stay" ("Emergency Motion") requesting Commission stay of the interim rule provisions ("Interim Rules") adopted in the First R&O pending Commission action on TPI's Emergency Petition. The Commission has not yet affirmatively acted on TPI's Emergency Motion. However, on May 10, 1996, the First R&O was published in the Federal Register. 61 Fed. Reg. 21380 (May 10, 1996). Pursuant to the explicit terms of the First R&O, the Interim Rules became effective on May 10, 1996. First R&O at ¶47. Accordingly, even though the Commission has not acted on TPI's Emergency Motion, the Commission has de facto denied TPI's Emergency Motion by failing to stay the Interim Rules prior to their May 10, 1996, effective date. As a result, TPI is not supplementing its Emergency Motion simultaneously herewith. TPI is, however, considering its options in response to the Commission's de facto denial of TPI's Emergency Motion, including immediate appeal to the Court of Appeals for emergency relief.

Commission must act **IMMEDIATELY** to reconsider the First R&O to make clear that TPI's frequency 929.2125 MHz<sup>2</sup> qualifies as a nationwide exclusive PCP frequency that is exempt from the Modified Freeze<sup>3</sup> because it will be excluded from geographic licensing.<sup>4</sup> TPI

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<sup>2</sup>TPI demonstrated that TPI is licensed for a nationwide exclusive paging system ("TPI Nationwide System" authorized pursuant to Commission licenses collectively referred to as "TPI Nationwide System Authorization") on Private Carrier Paging ("PCP") channel 929.2125 MHz and that TPI is currently in the process of completing construction of that system pursuant to an extended implementation authorization ("Slow Growth Authorization") granted to TPI by the Commission pursuant to 47 C.F.R. §90.496 in accordance with Commission Letter 7110-162 (December 1, 1995). Emergency Petition, p.3-4.

<sup>3</sup>In its Notice Of Proposed Rulemaking, WT Docket No. 96-18, PP Docket No. 93-253, FCC 96-52 (February 9, 1996) (hereinafter "NPRM") in the above-captioned proceeding, the Commission, inter alia, adopted a freeze ("Freeze") on acceptance of new applications for PCP and common carrier paging ("CCP") channels as of the February 8, 1996, adoption date of the NPRM (the "Adoption Date"). NPRM, ¶139. In its First R&O, the Commission modified the Freeze (the "Modified Freeze") to allow incumbent (*i.e.*, pre-Adoption Date) CCP and PCP licensees to file applications ("Modified Freeze Applications") for additional CCP and PCP transmission sites if the applicant certifies that the proposed transmission site is within 65 kilometers (40 miles) of an authorized and operating transmission site which was licensed to the same applicant on the same channel as of the Adoption Date. First R&O, ¶26. The Commission also permitted the filing of applications ("New Post-Freeze Applications") by new applicants that compete with Modified Freeze Applications within a specified time frame after Public Notice of acceptance of Modified Freeze Applications. Id.

<sup>4</sup>Emergency Petition at 7-25. In the NPRM, the Commission made clear that CCP and PCP licensees who have obtained nationwide exclusivity on a paging channel will be permitted to file co-channel applications without regard to the Freeze. NPRM at ¶142. The Commission also promised to release a Public Notice ("PCP Nationwide Exclusive Frequency PN") which will list PCP nationwide exclusive frequencies that will be exempt from the Freeze. NPRM at ¶26. The First R&O failed to clarify whether TPI's frequency 929.2125 MHz would be considered by the Commission as a nationwide exclusive PCP frequency that is both exempt from the Freeze and excluded from geographic licensing and as of the date of TPI's Emergency Petition, the Commission had still not released the PCP Nationwide Exclusive Frequency PN. Emergency Petition at 6-7.

demonstrated that emergency reconsideration of the First R&O is required because:

- In its First R&O, the Commission improperly failed to consider the arguments raised in TPI's Interim Comments and Interim Reply Comments filed with respect to the Interim Licensing Proposal proposed in the NPRM. Moreover, by failing to release the PCP Nationwide Exclusive Frequency PN, the Commission failed to clarify whether TPI's frequency 929.2125 MHz must be included as one of the PCP nationwide exclusive frequencies that is both exempt from the Modified Freeze and excluded from geographic licensing.
- The failure by the Commission to include TPI's frequency 929.2125 MHz as a nationwide exclusive PCP frequency that is exempt from the Modified Freeze and excluded from geographic licensing is in direct violation of the Commission's own rules and decisions and the previously-articulated Commission purpose for those rules.
- The Commission's failure to identify 929.2125 MHz as a nationwide exclusive PCP frequency exempt from the Modified Freeze and excluded from geographic licensing constituted a unilateral modification of the TPI Nationwide System Authorization, which violated Section 316 of the Communications Act of 1934, as amended (the "Act"), fundamental principles of due process and the overriding public interest in rapid licensing and deployment of nationwide paging systems.
- By failing to address TPI's frequency 929.2125 MHz in the First R&O, the Commission also impermissibly treated TPI in a substantially different manner than other, similarly-situated licensees of nationwide exclusive CCP and PCP channels.

Emergency Petition at 7-25.

2. By this Supplement, TPI updates its Emergency Petition to reflect the fact that on May 13, 1996, the Commission released the PCP Nationwide Exclusive Frequency PN.<sup>5</sup> Unfortunately, TPI's nationwide exclusive frequency 929.2125 MHz was not listed on the

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<sup>5</sup>PCP Nationwide Exclusive Frequency PN, DA 96-748 (May 10, 1996). The date specified on the PCP Nationwide Exclusive Frequency PN was May 10, 1996, but the document was not released to the public until May 13, 1996.

PCP Nationwide Exclusive Frequency PN.<sup>6</sup> On May 13, the Commission also released a second Public Notice establishing interim procedures for filing of CCP and PCP Modified Freeze Applications and New Post-Freeze Applications.<sup>7</sup> In the Interim Procedures PN, the Commission noted that the procedures adopted with respect to Modified Freeze Applications and New Post-Freeze Applications "do not apply to applications on 931.8875, 931.9125, and 931.9375 MHz, or to applications on those 929 MHz nationwide channels identified by separate Public Notice released today."<sup>8</sup>

3. As a result of its PCP Nationwide Exclusive Frequency PN and Interim Procedures PN, the Commission has now taken the position that TPI's nationwide exclusive frequency 929.2125 MHz is

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<sup>6</sup>PCP Nationwide Exclusive Frequency PN, p.1-2. TPI must emphasize that in its First R&O, the Commission stated that:

[O]ur records indicate that private carrier licensees have met our requirements for nationwide exclusivity on 19 channels in the 929 MHz band.

First R&O at n.8 (emphasis added).

In the PCP Nationwide Exclusive Frequency PN, however, the Commission listed only eighteen (18) nationwide exclusive PCP channels. PCP Nationwide Exclusive Frequency PN at 1-2. The Commission offered no explanation whatsoever for this discrepancy. Id. It is possible, therefore, that the Commission may simply have omitted TPI's nationwide exclusive frequency 929.2125 MHz from the PCP Nationwide Exclusive Frequency PN pursuant to a clerical error.

<sup>7</sup>Public Notice, "Wireless Telecommunications Bureau Establishes Interim Procedures For Filing Of Common Carrier And Private Carrier Paging Applications," DA 96-749 (May 10, 1996) ("Interim Procedures PN"). As with the PCP Nationwide Exclusive Frequency PN, the Interim Procedures PN specified a release date of May 10, 1996, but the document was not released to the public until May 13, 1996.

<sup>8</sup>Interim Procedures PN, n.2.

not a nationwide exclusive PCP frequency that is both exempt from the Modified Freeze and excluded from geographic licensing. TPI must first emphasize that neither the PCP Nationwide Exclusive Frequency PN nor the Interim Procedures PN in any way addressed TPI's Interim Comments or Interim Reply Comments, which demonstrated conclusively that the Interim Rules adopted in the First R&O should have exempted TPI's frequency 929.2125 MHz from the Modified Freeze because that frequency is a nationwide exclusive PCP frequency.<sup>9</sup> Accordingly, TPI hereby reiterates its position that the First R&O must be reconsidered because the Commission has still impermissibly failed to consider the TPI Interim Comments or Interim Reply Comments, which set forth highly relevant and vital facts and arguments.<sup>10</sup>

4. Moreover, now that the Interim Rules adopted in the First R&O became effective on May 10, 1996, despite TPI's Emergency Motion, TPI's operation and ongoing construction efforts with respect to the 929.2125 MHz TPI Nationwide System are now subject to the Modified Freeze:

- In direct violation of explicit Commission regulations and the previously-articulated purpose therefor.<sup>11</sup>
- In violation of Section 316 of the Act, which prohibits the unilateral modification of the TPI Nationwide System Authorization that the Commission has now imposed on

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<sup>9</sup>Interim Comments, p.8-12, 17-20; Interim Reply Comments, p.6-9.

<sup>10</sup>Emergency Petition at 9-12.

<sup>11</sup>Emergency Petition at 12-18.

TPI.<sup>12</sup>

- Contrary to fundamental principles of due process and the overriding public interest in rapid licensing and deployment of nationwide paging systems.<sup>13</sup>
- In violation of longstanding Commission precedent that requires that the Commission cannot treat TPI in a substantially different manner than other, similarly-situated licensees of nationwide exclusive CCP and PCP channels.<sup>14</sup>
- Resulting in immediate, ongoing substantial irreparable injury TPI.<sup>15</sup>

5. For all of the reasons specified in TPI's Emergency Petition, TPI respectfully submits that the Commission must still act **IMMEDIATELY** to reconsider the First R&O now that the PCP Nationwide Exclusive Frequency PN and the Interim Procedures PN have made clear that TPI's frequency 929.2125 MHz does not qualify as a nationwide exclusive PCP frequency and will, therefore, be subject to the Modified Freeze.

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<sup>12</sup>Id. at 18-22.

<sup>13</sup>Id. at 23.

<sup>14</sup>Id. at 23-25.

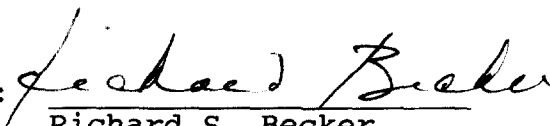
<sup>15</sup>Emergency Motion, p.9-19.

**WHEREFORE**, TPI hereby supplements its Emergency Petition to:

- Include in its appeal the PCP Nationwide Exclusive PN and the Interim Procedures PN, which confirm that the Commission impermissibly failed to include TPI's frequency 929.2125 MHz as a nationwide exclusive PCP frequency that is exempt from the Modified Freeze and excluded from geographic licensing.
- Reiterate TPI's request for **IMMEDIATE** reconsideration of the First R&O, the PCP Nationwide Exclusive PN and the Interim Procedures PN to make clear that TPI's 929.2125 MHz qualifies as a nationwide exclusive PCP frequency that is exempt from the Modified Freeze and excluded from geographic licensing.

Respectfully submitted,

**TSR PAGING INC.**

By:   
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Its Attorneys

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Date: May 14, 1996



**CERTIFICATE OF SERVICE**

I, Emily Luther, a secretary in the law firm of Richard S. Becker & Associates, Chartered, hereby certify that I have on this 14th day of May, 1996, caused to be hand delivered copies of the foregoing **"SUPPLEMENT TO EMERGENCY PETITION FOR RECONSIDERATION"** to the following:

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Washington, D.C. 20554

James H. Quello, Commissioner  
Federal Communications Commission  
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Rachelle B. Chong, Commissioner  
Federal Communications Commission  
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Susan Ness, Commissioner  
Federal Communications Commission  
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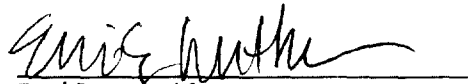
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Emily Luther

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\* Via United Parcel Service overnight courier.